IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

R.R.C., *et al.*, Petitioners, v. JASON STREEVAL, *et al.*, Respondents.	Civil Action No.: 4:25-cv-00525 4:26-cv-00163 4:26-cv-00073 4:26-cv-00098 4:25-cv-00527 4:26-cv-00076 4:26-cv-00176 4:26-cv-00225 4:26-cv-00249 4:26-cv-00266 4:26-cv-00271

RESPONSE TO SUPPLEMENTAL BRIEF AND MOTIONS TO ENFORCE

In this consolidated action, the Court ordered Respondents to provide each Petitioner "with a bond hearing to determine if the Petitioner may be released on bond under § 1226(a)(2) and the applicable regulations. *See* 8 C.F.R. §§ 236.1 & 1236.1." ECF No. 9.[1] Petitioners all received a bond hearing pursuant to the Court's orders.

Several weeks later, however, and before pursuing relief with the Board of Immigration Appeals, Petitioners all filed motions to enforce, arguing that their bond hearings did not comply with the Court's orders in their cases. More specifically, Petitioners claim that they were improperly denied bond because the Immigration Judges who heard their cases failed to conduct an individualized assessment of their circumstances. *See generally* ECF No. 11. Some Petitioners claim, without any evidence, that some, most, or all Immigration Judges were directed during a

[1] Unless otherwise noted, citations are to the lead case, *R.R.C. v. Streeval, et al.*, 4:25-cv-525.

conference call with an unnamed representative from the Executive Office for Immigration Review (EOIR) to deny bonds in all cases, especially those where a federal district court ordered a bond hearing following a habeas grant. *See, e.g.*, 4:25-cv-527, ECF No. 8 at 3.

The Court convened a hearing on Petitioners' motions on February 23, 2026. ECF No. 16. The hearing lasted approximately two hours and covered several topics, but primarily focused on whether the Court has jurisdiction to hear Petitioners' claims and whether Petitioners should instead pursue relief with the Board of Immigration Appeals (BIA). At the conclusion of the hearing the Court ordered the parties to address whether discovery was warranted on the narrow question of whether Petitioners' bond hearings complied with the Court's orders. Petitioners filed their motion for discovery on March 5, 2026. ECF No. 21. Although not ordered by the Court, Petitioners also filed a "Supplemental Brief" on a host of issues that have no bearing on Petitioners' cases as this late stage.

Respondent now files this Response to Petitioners' Supplemental Brief and Motions to Enforce. Petitioners' motions to enforce should be denied for at least four reasons. First, Respondent fully complied with the Court's orders granting bond hearings. Second, the only way to determine that the bond hearings did not satisfy this Court's orders, as Petitioners argue, is to review, and, if appropriate, set aside the IJs' decisions regarding Petitioners' entitlement to bond. But the Immigration and Nationality Act (INA) explicitly and in no uncertain terms *precludes* judicial review of the merits of an IJ's bond decision. *See* 8 U.S.C. § 1226(e). Third, in addition to the specific jurisdictional bar in § 1226(e), 8 U.S.C. § 1252(a)(2)(B)(ii) further precludes judicial review over decisions committed to the discretion of the Attorney General and the Secretary of Homeland Security, which clearly includes the decisions of IJs over bond requests.

Fourth, and finally, attempting an end-run around the jurisdictional bars, Petitioners lodge a constitutional challenge to the allocation of the burden on the non-citizen in a § 1226(a) bond hearing. But Petitioners cannot reasonably contest that the statute and applicable regulations place the burden on the non-citizen, and they likewise cannot contest that the Court's orders explicitly directed Respondent to provide a bond hearing consistent with the statute and regulations. Thus, a challenge to the burden, and therefore to the statute and regulations that establish that burden, is not consistent with seeking to "enforce" an order that unquestionably directed that exact procedural mechanism to be utilized. Despite framing their complaint as a constitutional challenge, it is not the type of constitutional challenge that might skirt § 1226(e)'s jurisdictional bar, and it is certainly inappropriate in this procedural posture. Moreover, if the Court reaches it, such a constitutional challenge should fail. For all these reasons, the motions should be denied.

I. Respondent complied with the Court's orders.

As an initial matter, Respondent fully complied with the Court's orders granting in part Petitioners' habeas petitions. In each, the Court ordered "a bond hearing to determine if the Petitioner may be released on bond under § 1226(a)(2) and the applicable regulations. *See* 8 C.F.R. §§ 236.1 & 1236.1." ECF No. 9. That is exactly what was provided. The relevant regulations, directly cited by the Court, state that upon a request from a detained non-citizen, the IJ may decide "to detain the [non-citizen] in custody, release the [non-citizen], and determine the amount of bond, if any, under which the [non-citizen] may be released[.]" 8 C.F.R. § 236.1(d)(1). In a bond hearing before the IJ, the burden is on the non-citizen to establish to the satisfaction of the IJ that he is not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise

a poor bail risk." *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006).[2] Non-citizens may present evidence in support of their request for bond. *See* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the [non-citizen] or the Service.").

IJs have extremely broad discretion in deciding whether to release a non-citizen on bond. *Guerra*, 24 I. & N. Dec. at 39. They can consider multiple discretionary factors, including any information that the IJ may deem to be relevant. *Id*. at 40. These nonexclusive factors include:

> (1) whether the [non-citizen] has a fixed address in the United States; (2) the [non-citizen's] length of residence in the United States; (3) the [non-citizen's] family ties in the United States, and whether they may entitle the [non-citizen] to reside permanently in the United States in the future; (4) the [non-citizen's] employment history; (5) the [non-citizen's] record of appearance in court; (6) the [non-citizen's] criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the [non-citizen's] history of immigration violations; (8) any attempts by the [non-citizen] to flee prosecution or otherwise escape authorities; and (9) the [non-citizen's] manner of entry to the United States.

Id. In considering these or other relevant factors, IJs "may choose to give greater weight to one factor over others, as long as the decision is reasonable." *Id.* Further, the INA in no way "limit[s] the discretionary factors that may be considered" in bond determinations. *Id.*; *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the [non-citizen] or [ICE].").

By directing that Petitioners receive a bond hearing "under § 1226(a)(2) and the applicable regulations," the Court signaled its intent that the bond hearings should be conducted in the same

[2] IJs are bound to apply precedential decisions of the BIA. *See* 8 C.F.R. §§ 1003.10(d); 1003.19, 1236.1. Thus, by directing a bond hearing governed by the applicable regulations, the Court at least implicitly directed the IJs to follow their normal procedures, including applying relevant BIA precedent. *Id*.

manner as any other bond hearing that would be provided to a detainee held under § 1226(a), including those who did not file a habeas petition. ECF No. 9. And Petitioners do not argue otherwise. Instead, Petitioners dig into the record of the IJ's decisions in their individual cases and detail for this Court why, in their opinion and those of other lawyers, the IJ failed to properly apply the statute and regulations. ECF No. 11 at 6-9.

But each of the points raised by Petitioners exemplifies why the motions are simply after-the-fact challenges to the IJs' discretionary decisions, rather than proper motions to enforce judgment. It is not that Petitioners did not receive the relief ordered by this Court; rather, Petitioners do not like the relief they received and want this Court to either order a re-do on terms more likely to result in success or completely throw the results out and conduct the bond analysis itself. This is not an appropriate use of a motion to enforce judgment. *See*, *e.g.*, *Tahir G. v. Sessions*, No. 18-17175 (ES), 2020 WL 14050379, at *2 (D.N.J. Apr. 30, 2020) (denying motion to enforce habeas order where detained petitioner sought district court review of IJ's bond decision following grant of habeas relief because the court lacked jurisdiction under § 1226(e) and petitioner had not exhausted the remedy of BIA review).

Notwithstanding Petitioners' complaints to the contrary, the IJs held the ordered bond hearings. The IJs considered the evidence along with the burden imposed by the regulations and determined that Petitioners were not entitled to release. Thus, Petitioners received the bond hearings that the Court ordered, and their motions to enforce should be denied.

II. Section 1226(e) precludes district courts from reviewing decisions regarding the grant, revocation, or denial of bond.

The INA *expressly* precludes judicial review of the merits of an IJ's bond decision. *See* 8 U.S.C. § 1226(e) ("No court may set aside *any* action or decision by the Attorney General under [] section [1226] regarding the detention of any noncitizen or the revocation or *denial* of bond or

parole.") (emphasis added). The language of this section is crystal clear—this Court does not have jurisdiction to review Petitioners' bond decisions. "[Section] 1226(e) precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release." *Jennings*, 583 U.S. at 295 (quoting *Demore v. Kim*, 538 U.S. 510, 516 (2003)) (internal alterations and quotations omitted). Rather, § 1226(e) permits only "challenges to the statutory framework." *Id.* (quoting *Demore*, 538 U.S. at 517) (internal alterations and quotations omitted).

Petitioners' motions unquestionably constitute a challenge to an "action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e). Although they attempt to cloak their challenges in constitutional garb, what they are asking this Court to do is review what happened at their individual bond hearings and determine whether they complied with the relevant regulations. District courts in the Eleventh Circuit have recognized that they lack jurisdiction over such challenges. *See, e.g.*, *Hernandez v. Warden, Etowah Cty. Det. Ctr.*, No. 4:19-cv-00746, 2020 WL 5172423, at *3 (N.D. Ala. July 24, 2020) ("To the extent [the § 1226(a) detainee] challenges the immigration judge's determination he was not entitled to be released on bond, this court cannot revisit the denial of bond. . . . In other words, [the detainee] has already received the sole relief this court could provide. Nor can the length of his detention alone entitle him to additional bond hearings under § 1226(a)." (citing *Borbot*, 906 F.3d at 277)), *recommendation adopted*, 2020 WL 5110761 (N.D. Ala. Aug. 31, 2020); *Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 (S.D. Ga. Jan. 29, 2020) ("The immigration judge's decision to deny [the § 1226(a) detainee] bond was based on his finding, after two hearings, that [the detainee] did not establish he is not a danger to society or a flight risk was within the discretion afforded under § 1226(a). Thus, this Court

cannot review this decision under § 1226(e)."), *recommendation adopted* 2020 WL 821005 (S.D. Ga. Feb. 18, 2020). The Court should reach the same conclusion here and deny the motions.

Importantly, the statute and regulations do not foreclose any review or appeal of an IJ's decision; it merely routes those appeals to the BIA. *See* 8 C.F.R. § 1003.19(f) ("An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to § 1003.38."). And the BIA is the appropriate forum for Petitioners' complaints regarding the IJs' alleged failures to follow BIA precedent and properly apply the factors outlined in *In re Guerra* and other precedential decisions. ECF No. 11 at 6-9. Insofar as Petitioners are challenging the conduct of the IJs at their bond hearings, there should be no question that the appropriate forum to raise those challenges is with the BIA. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3)(i).

To avoid the jurisdictional bar, Petitioners try to couch their requests in constitutional terms and rely on misapplied and incomplete snippets from the Supreme Court that § 1226(e) "'does not bar [a] constitutional challenge to the legislation authorizing . . . detention without bail,' nor does it preclude challenges to 'the extent of the Government's detention authority under the statutory framework as a whole.'" ECF No. 20 at 4 (citing *Demore*, 538 U.S. 510 and *Jennings*,138 S. Ct. at 841). But that is not what Petitioners are requesting from this Court. At this current stage of the case, they are not challenging the legislation authorizing their detention or the statutory framework as a whole. Instead, under the guise of a motion to enforce, Petitioners are asking the Court for a new ruling on the merits of their Petitions and to issue new relief—immediate release or bond hearings under different rules—rather than making the constitutional challenges they suggest. They are not raising a "constitutional challenge to the legislation authorizing detention without bail," because the Court has already ruled that they are not subject to such legislation, but are

instead entitled to bond hearings under a different legislative provision (i.e., § 1226(a)). Further, they are not challenging the Government's detention authority under the statutory framework, as the Court has already determined that the Government has the authority to detain them, albeit under a different statute than the one the Government initially asserted, and Petitioners do not challenge that decision here.[3]

To the extent Petitioners insinuate that a policy of some kind dictated the outcome of their bond hearings, they offer only speculation—and the personal views of attorneys who represent immigrant detainees and who believe that more individuals should be granted bond—to support this assertion. However, the only direct evidence in the record on this question is the February 22, 2026 declaration from EOIR Director Daren K. Margolin, which debunks Petitioners' theory: "There has been absolutely no formal or informal policy guidance issued within EOIR directing immigration judges to deny bond in bond hearings that were ordered by United States district judges." ECF No. 15-1. Petitioners thus use attorney observations about trends in bond decisions to argue that *they personally should have been granted bond*. But as the Supreme Court recognized in *Jennings*, "§ 1226(e) precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release." 583 U.S. at 295 (quoting *Demore*, 538 U.S. at 516) (internal alterations and quotations omitted). This is exactly what Petitioners invite the Court to do here—review the IJ's bond decision

[3] Petitioners' reliance on *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020), for the principle that "claims that the discretionary process itself was constitutionally flawed are cognizable in federal court" is, at best, misguided. ECF No. 20 at 4. Their selective choice of quotations from *Velasco Lopez* does not recognize that it was actually a quote from the Ninth Circuit Court of Appeals' decision *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011), which has since been abrogated. Moreover, the actual challenge at issue in *Velasco Lopez* was to the procedures that resulted in the petitioner's detention for over 14 months. He was not challenging the IJ's individual decision on whether he was entitled to bond.

in their individual cases. The Court should reject this invitation as expressly precluded by § 1226(e).

Lacking evidence in support of their theory that EOIR directed IJs to categorially deny bond, Petitioners resort to incomplete and one-sided statistics they claim support their position. They assert that "[b]eginning in late January 2026, Stewart and Folkston IJs—particularly IJs Brown and Harness—denied bond in nearly every case in which they reached the merits (with IJ Brown denying 100%)." ECF No. 20 at 17. Petitioners are wrong. Since late January 2026, non-citizens have continued receiving bonds in reasonable amounts from IJs at Stewart Detention Center, including from IJ Bianca Brown. *See* Bond Orders from Stewart Detention Center, attached hereto as Exhibit A. Regardless, because IJs make individualized, case-by-case determinations in each matter, what another IJ may have done in another non-citizen's case is irrelevant to whether Petitioners themselves warrant release on bond. Again, however, the Court is precluded by § 1226(e) from reviewing Petitioners' or any other non-citizen's denial of bond.

III. Because the decision whether to grant or deny bond is committed to the discretion of the IJ, 8 U.S.C. § 1252(a)(2)(B)(ii) precludes judicial review over decisions regarding bond.

In the alternative, if the Court does not believe that § 1226(e) bars review of the IJ decisions that Petitioners seek, Respondent directs the Court to 8 U.S.C. § 1252(a)(2)(B)(ii) as an alternative basis for restricting its jurisdiction. In the immigration context, the INA limits federal courts' jurisdiction to review discretionary determinations made by the Executive Branch:

> [n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]

8 U.S.C. § 1252(a)(2)(B). This jurisdiction-stripping provision also applies to decisions of IJs regarding the grant or denial of bond under § 1226(a), as the decision to detain or release on bond is entrusted to the discretion of the Attorney General. Specifically, the relevant statute provides that the Attorney General "(1) *may* continue to detain [an] arrested alien; and (2) *may* release the alien on—(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General[.]" 8 U.S.C. § 1226(a) (emphasis added). In fact, the statutory provisions governing bond decisions contain *only* discretionary language. Because it is fully within the IJ's discretion whether to grant bond, § 1252(a)(2)(B)(ii) precludes district court review.

IV. A post-judgment motion to enforce is not the appropriate tool for Petitioners' constitutional challenge to bond procedures.

A. <u>Petitioners ask for more than mere "enforcement" of the Court's orders.</u>

In an attempt to avail themselves of the Court's jurisdiction while remaining within the confines of their Motions to Enforce, Petitioners shift the framework of what they ask the Court to do. The bottom line, however, is that Petitioners seek to have the Court issue an entirely new order, not for it to enforce the clear directive of its previous order. Instead of enforcing its previous order, Petitioners ask the Court to alter the relief granted and replace it with something more to Petitioners' liking that they believe is more likely to lead to their release. But that is not the purpose of a motion to enforce.

Petitioners cite to Federal Rule of Civil Procedure 70, which states that if "a judgment requires a party . . . to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party's expense—by another person appointed by the court." Fed. R. Civ. P. 70(a). The basic prerequisite for operation of Rule 70 has not been met. Here, the Court ordered a hearing under the terms of a specific statute and regulations, and Petitioners received the hearings that were ordered. *See* Sec. I, *supra.*

Rather than seeking enforcement of the orders, then, Petitioners ask the Court to reach a new decision on the underlying merits of their habeas petitions. Petitioners seek to re-litigate previously raised claims regarding, among other things, their arrests, detention authority, and custody reviews. But these issues are not relevant at this late stage of this consolidated action. The Court has already granted Petitioners' habeas petitions and entered judgment to that effect. A motion to enforce ostensibly asks the narrow question of whether the Court's orders were followed. And yet, in addition to the above immaterial subjects, Petitioners also request that the Court find that the procedures previously ordered by the Court to be utilized in their bond hearings fail to satisfy due process (a finding that the Court could have but did not make on the merits of the habeas petitions). They then ask that the Court order a new bond hearing during which the Government bears the burden on the question of bond and bond amount. This is a new request that should have been brought in a separate action, rather than an attempt to enforce the Court's previous orders for bond hearings. This relief is not available at this procedural posture, and Petitioners' motions should be denied on that basis alone.

B. The proper remedy for the alleged failures in the bond hearings is appeal to the BIA, not a motion to enforce.

Additionally, this procedural mechanism is also inappropriate because Petitioners have not availed themselves of the proper appellate remedy: an appeal to the BIA. As such, they have not exhausted all administrative remedies available to them, which should be required before resorting to the drastic relief Petitioners seek. "[T]he general rule [is] that parties exhaust prescribed administrative remedies before seeking relief from the federal courts." *McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81, 88-89 (2006). Although it is not jurisdictional in nature, "[t]he exhaustion requirement is still a requirement" for petitioners seeking relief under 28 U.S.C. § 2241. *Santiago-*

Lugo v. Warden, 785 F.3d 467, 474-75 (11th Cir. 2015). "[C]ases . . . are ripe for dismissal unless administrative remedies [have] been exhausted before the cases [are] brought to the district court." *Perez-Perez v. Hanberry*, 781 F.2d 1477, 1481 (11th Cir. 1986) (citing *Garcia-Mir v. Smith*, 766 F.2d 1478, 1483 n.6, 1486 n.8, 1489, 1492 (11th Cir. 1985)).

Where non-citizens detained pre-final order of removal file habeas petitions seeking release from custody, district courts in the Eleventh Circuit have dismissed those petitions where the non-citizens failed to exhaust available administrative remedies for obtaining bond before seeking habeas relief. *See M.A.M.M. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:21-cv-47-WLS-MSH, 2022 WL 452452, at *3 (M.D. Ga. Feb. 14, 2022), *recommendation adopted*, 2022 WL 794716 (M.D. Ga. Mar. 14, 2022); *Douglas v. Gonzalez*, No. 8:06-cv-890, 2006 WL 5159196, at *2 (M.D. Fla. June 12, 2006); *Sequeira-Blamaceda v. Reno*, 79 F. Supp. 2d 1378, 1381-82 (N.D. Ga. 2000).

Petitioners' pleas for the Court to stray from its typical practice requiring exhaustion are unavailing. By failing to pursue an available administrative remedy to secure the relief they seek, Petitioners have deprived the agency of the opportunity to review their claims under the administrative bond scheme set forth by Congress and the applicable regulations. "Preventing petitioners from doing that is what the exhaustion requirement is all about." *Sundar v. I.N.S.*, 328 F.3d 1320, 1325 (11th Cir. 2003) (citations omitted). This is particularly important under the facts presented here, where Petitioners allege that the IJs hearing their cases failed to properly apply BIA precedent in determining whether to grant Petitioners a reasonable bond. This alleged error is precisely what the administrative remedy of appeal to the BIA is intended to correct. And Petitioners appear to recognize as much, citing to a collection of decisions from the BIA in which it reversed IJs' "no-bond" decisions. ECF No. 20 at 12, n.6. Petitioners should be required to exhaust this remedy prior to seeking relief from the Court via a motion to enforce.

Petitioners' arguments that appeals to the BIA would be futile also lack merit. Petitioners suggest that, because of binding BIA precedent, the BIA cannot grant a bond hearing at which the government bears the burden. But this again proves that what Petitioners seek is not enforcement of the Court's orders, but a new order for different relief; relief that the Court previously rejected. The statistical evidence presented by Petitioners regarding the BIA's decisions is incomplete, one-sided, and does not support their position. The statistics do not focus on relevant categories or topics of BIA appeals, making them overinclusive, and they don't acknowledge what Petitioners have now conceded: that the BIA has ordered IJs to revisit bond determinations that fail to adequately consider the relevant factors and precedent. Thus, Petitioners have not shown that appeal to the BIA would be futile and have not justified bypassing that administrative avenue for relief.

V. Alternatively, Petitioners' due process challenge fails on the merits.

If the Court reaches the merits of Petitioners' due process challenge, it should find that the procedures utilized in the bond hearings Petitioners received satisfy due process. Judge Lawson's decision in *J.G. v. Warden*, relied on by Petitioners, is helpful to a proper understanding of the appropriate framework for considering Petitioners' due process argument. *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331 (M.D. Ga. Nov. 16, 2020).

In *J.G.*, an immigration detainee sought habeas relief pending his ongoing removal proceedings. 501 F. Supp. 3d at 1333. Unlike Petitioners here, J.G. was initially admitted to the United States on a B-1 visa, but he overstayed that visa and was placed in removal proceedings. *Id*. After the IJ initially denied J.G.'s bond request under the same statute and regulations ordered to be utilized here, J.G. remained detained throughout his proceedings. *Id*. After J.G.'s asylum request was denied by the IJ, he was ordered removed. *Id*. J.G. appealed the denial of his asylum

request to the BIA, which reversed the decision in part and remanded to the IJ for further proceedings. *J.G.*, 501 F. Supp. 3d at 1333. The IJ denied J.G.'s subsequent request for bond based on the changed circumstances of the BIA's remand order, and again denied his asylum application and ordered him removed. *Id*. J.G. appealed the second removal order to the BIA, and he had been detained for nearly two years by the time his petition for habeas relief reached this Court. *Id*.

The question presented in *J.G.* was complex but precise: whether procedural due process concerns mandate a bond procedure different from the procedure outlined in the statute, regulations, and BIA precedent for a non-citizen detainee who was lawfully admitted to the United States but later became removable and who had been detained for nearly two years. *J.G.*, 501 F. Supp. 3d at 1334. Applying the test from *Mathews v. Eldridge*, Judge Lawson concluded that it did *in that circumstance*. *Id*. at 1335-41. In doing so, however, Judge Lawson noted that:

> Supreme Court due process jurisprudence distinguishes between noncitizens seeking initial entry to the United States at the border and those who entered the country legally. *See Zadvydas*, 533 U.S. at 693, 121 S. Ct. 2491 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."); *Dep't of Homeland Sec. v. Thuraissigiam*, ––– U.S. ––––, 140 S. Ct. 1959, 1982–83, 207 L.Ed.2d 427 (2020) (discussing the "century-old rule regarding the due process rights of an alien seeking initial entry"). "Any analysis of the constitutional rights of [noncitizens] in the immigration context must begin by taking note of th[is] fundamental distinction ...." *Jean v. Nelson*, 727 F.2d 957, 967 (11th Cir. 1984). A noncitizen "seeking initial admission to the United States ... has no constitutional rights regarding his application, for the power to admit or exclude [noncitizens] is a sovereign prerogative." *Landon*, 459 U.S. at 32, 103 S. Ct. 321. In contrast, "once [a] [noncitizen] gains admission to our country ... his constitutional status changes accordingly." *Id.*; *see Thuraissigiam*, 140 S. Ct. at 1983 ("[A]n alien [detained at the border] has only those rights regarding admission that Congress has provided by statute.... [T]he Due Process Clause provides nothing more ....).

501 F. Supp. 3d at 1339. This distinction is important. Judge Lawson found that, "[J.G.] was admitted to the United States legally and overstayed his previously-valid visa. He thus receives procedural protections *not afforded to noncitizens seeking initial entry*, and the Government's

interest in controlling admission of noncitizens at the border does not justify his detention." *Id.* (emphasis added). The reverse is true here. Petitioners were not and have never been admitted to the United States. Each was deemed to fall within the Court's decision in *J.A.M.*, which necessarily means each entered the United States without inspection or lawful admission.[4] As Judge Lawson recognized in *J.G.*, the procedural protections that he recognized for J.G. are "not afforded to noncitizens seeking initial entry," such as Petitioners. As such, application of the test from *Mathews v. Eldridge* demonstrates that current bond procedures satisfy Petitioners' procedural due process rights.

"[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). To determine whether procedural protections satisfy due process, courts apply the test set forth in *Mathews v. Eldridge*, which analyzes three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

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[4] To the extent any of the Petitioners was released on an order of recognizance or other form of humanitarian parole exercised at the discretion of the Executive Branch under 8 U.S.C. § 1182(d)(5)(A), this does not change their status. Section 1182(d)(5)(A) provides that "[t]he Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]" However, § 1182(d)(5)(A) also makes clear that "such parole of such alien ***shall not be regarded as an admission of the alien***[.]" *See also Jennings*, 583 U.S. at 288 (emphasis added). Based on this language, the Eleventh Circuit has recognized that "[p]arole is not admission." *Sookhoo v. U.S. Attorney Gen.*, 596 F. App'x 771, 772-73 (11th Cir. 2015) (per curiam) (citing 8 U.S.C. § 1101(a)(13)(B); 8 U.S.C. § 1182(d)(5)(A); *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) ("The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status . . . .")). Thus, release does not alter any of Petitioners' statuses as applicants for admission who have never been lawfully admitted into the United States. "Since an alien's legal status is not altered by detention or parole[,] it seems clear that [paroled aliens] can claim no greater rights or privileges under our laws than any other group of aliens who have been stopped at the border." *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984).

Mathews, 424 U.S. at 335. As the Court recognized in *Mathews*, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (internal quotations and citations omitted).

In applying the *Mathews* test in the immigration context, courts "must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Congress has "emphatic[ally] . . . inten[ded] to make the [Government's] exercise of discretion presumptively correct and unassailable except for abuse" in the immigration detention context. *Carlson v. Landon*, 342 U.S. 524, 540 (1952). "[O]ver no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has held that "the role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy." *Landon*, 459 U.S. at 35.

While the Eleventh Circuit has not addressed this issue, the Third Circuit, Fourth Circuit, and Ninth Circuit have held that the § 1226(a) bond procedures comply with non-citizens' procedural due process rights. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1203-14 (9th Cir. 2022) (holding that the § 1226(a) burden allocation does not violate a non-citizen's procedural due process rights); *Miranda v. Garland*, 34 F.4th 338, 358-66 (4th Cir. 2022) (same); *Borbot*, 906 F.3d at 276-80 (same). These decisions rely in part on recent Supreme Court decisions concerning bond hearings for different classes of non-citizens. In particular, both the Third Circuit and Ninth Circuit declined to extend their existing caselaw requiring bond hearings for § 1226(c) detainees based on the Supreme Court's holding in *Jennings* that "[n]othing in § 1226(a)'s text . . . even

remotely supports the imposition" that "the Attorney General must prove by clear and convincing evidence that the alien's continued detention is necessary." *Jennings*, 583 U.S. at 306; *see Borbot*, 906 F.3rd at 276-80; *Rodriguez Diaz*, 53 F.4th at 1198-1203.

Additionally, district courts in the Eleventh Circuit have addressed this issue and declined to order § 1226(a) bond hearings at which the burden of proof rests with the Government. *See Stephens v. Ripa*, No. 1:22-cv-20110, 2022 WL 1110104, at *8-9 (S.D. Fla. Feb. 18, 2022) (declining to order that the Government bears the burden of proof at a § 1226(a) bond hearing), *recommendation adopted in part*, 2022 WL 621596 (S.D. Fla. Mar. 3, 2022); *Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 n. 3 (S.D. Ga. Jan. 29, 2020) (same), *recommendation adopted*, 2020 WL 821005 (S.D. Ga. Feb. 18, 2020); *Khan v. Whiddon*, No. 2:13-cv-638, 2016 WL 4666513, at *7 (M.D. Fla. Sept. 7, 2016) (same).[5] This Court should reach the same conclusion in this case.

Nonetheless, application of the *Mathews* factors applied to Petitioners' circumstances shows that the § 1226(a) bond procedures—including the allocation of the burden of proof to the non-citizen—comply with procedural due process. The first *Mathews* factor—the private interest—weighs in Respondent's favor. In *J.G.*, the Court found that the private interest factor weighed in the non-citizen's favor by emphasizing that immigration detention affects a non-citizen's "fundamental liberty interest." *J.G.*, 501 F. Supp. 3d at 1336 (citing *Hamdi v. Rumsfeld*,

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[5] In reaching this conclusion, those courts noted that in *Sopo v. U.S. Att'y Gen.*, the Eleventh Circuit ordered that a non-citizen mandatorily detained under § 1226(c) be provided a bond hearing applying the § 1226(a) bond procedures. 890 F.3d 1199, 1220 (11th Cir. 2016). In doing so, the Eleventh Circuit acknowledged that "[l]ike non-criminal aliens, the criminal alien carries the burden of proof and must show that he is not a flight risk or danger to others." *Id.* Although *Sopo* was later overturned, the fact that the Eleventh Circuit *remedied* an apparent due process violation by ordering a bond hearing applying the current § 1226(a) bond procedures shows that those procedures are, themselves, compliant with procedural due process.

542 U.S. 507, 529 (2004)). The Court relied on "civil commitment cases" which "inform[ed] its due process analysis in immigration cases." *Id.* (citing *Zadvydas*, 533 U.S. at 690).

However, "[t]he requirements . . . which apply to the detention of citizens[] do not apply in the context of immigration removal proceedings. Due process is not a one size fits all proposition." *Miranda*, 34 F.4th at 359. Whereas for United States citizens the "Court repeatedly has recognized that civil confinement for any purpose constitutes a significant deprivation of liberty," *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (citations omitted), in the immigration context, "detention during deportation proceedings is a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings . . . ."). In other words, unlike civil commitment of United States citizens, the Supreme Court has already recognized that detention of non-citizens pending a removal order is an integral part of the removal process.

The Supreme Court has upheld bond procedures similar to those in § 1226(a) bond proceedings even when they are applied to United States citizens. Specifically, in *United States v. Salerno*, 481 U.S. 739, 755 (1987), the Court found that the Bail Reform Act was constitutional, including its rebuttable presumption provisions which require individuals (including United States citizens) to bear the burden of showing that they do not pose a danger to the community or a flight risk. *See* 18 U.S.C. § 3142(e); *Salerno*, 481 U.S. at 755. "If, in the criminal context, requiring citizens to bear the burden to show that they are not a danger to the community and a flight risk is not unconstitutional, it cannot be unconstitutional for the government to place a similar burden on an alien facing removal proceedings[.]" *Miranda*, 34 F.4th at 363; *see also Demore*, 538 U.S. at

522 ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." (citations omitted)).

As Judge Lawson noted in *J.G.*, the Supreme Court has also recognized distinctions in the liberty interests among different classes of non-citizen immigration detainees. In *Zadvydas*, the Court established a temporal limitation on post-final order of removal detention by distinguishing pre-final order of removal detention because the former "has no obvious termination point." *Zadvydas*, 533 U.S. at 697. Pre-final order of removal detention under § 1226 is "materially different" because "the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings" and has a "definite termination point." *Demore*, 538 U.S. at 511-12; *see also Jennings*, 583 U.S. at 304 ("[W]e distinguished § 1226(c) from the statutory provision in *Zadvydas* by pointing out that detention under § 1226(c) has a definite termination point: the conclusion of removal proceedings." (internal quotations omitted)); *Miranda*, 34 F.4th at 360 ("[T]he Supreme Court held that the due process concerns regarding post-removal hearing detention described in *Zadvydas* did not apply to detention pending the removal hearing."). Thus, even if *Zadvydas* permits release for non-citizens detained post-final order of removal, non-citizens—like Petitioners—who are detained pre-final order of removal stand on a different footing. And pre-final order detainees who have never effected entry into the United States are in another category altogether. *See J.G.*, 501 F.Supp.3d at 1339. These distinctions among the relevant liberty interests must be considered, and they show that this first *Mathews* factor weighs in Respondent's favor.

The second *Mathews* factor—the risk of erroneous deprivation—also weighs in Respondent's favor. In *J.G.*, the Court found that this factor weighed in the non-citizen's favor because "[t]he risk of erroneous deprivation under the [§ 1226(a)] bond procedure is high." *J.G.*,

501 F. Supp. 3d at 1337. In particular, the Court was concerned that "[t]he Government is not required to present a shred of evidence, yet it has substantial resources available," emphasizing the difference between DHS' "substantial resources" and a non-citizen's difficulty in obtaining records or testimony. *Id.* at 1337-38. But these concerns go to "congressional choices of policy" which are not appropriate considerations when analyzing the procedural due process protections supplied by the INA. *Landon*, 459 U.S. at 35. And the Court did not consider that the bond procedures provide the "fundamental features of due process—notice and opportunity to be heard." *Miranda*, 34 F.4th at 362 (citing *Mathews*, 424 U.S. at 333).

The Court's concerns about agencies "shar[ing] information through interagency databases," the inability to obtain some information through Freedom of Information Act requests, and the difficulty in preparing a case while confined can also be true of civil commitment or pretrial bond hearings involving United States citizens. *See J.G.*, 501 F. Supp. 3d at 1337-38. Moreover, § 1226(a) permits the pre-final order of removal detention of non-citizens—like Petitioners here—who unlawfully enter the United States without admission. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

The § 1226(a) bond procedures also mitigate a risk of erroneous deprivation by providing three levels of custody review: (1) an initial custody determination by an immigration officer, 8 C.F.R. §§ 236.1(c)(8), 236.1(d), (2) a bond hearing before an IJ, 8 C.F.R. § 236.1(d)(1), and (3) an appeal to the BIA, 8 C.F.R. § 236.1(d)(3). *Rodriguez Diaz*, 53 F.4th at 1210 ("[T]he agency's decision to detain [the non-citizen] was subject to numerous levels of review, each offering [the non-citizen] the opportunity to be heard by a neutral decisionmaker."). To be sure, Petitioners were initially detained under a reading of the INA that all applicants for admission who entered the United States without inspection are mandatorily detained under 8 U.S.C. § 1225(b), but the Court reached a different conclusion and ordered that they be provided the bond hearing described in

step (2) of the custody review process. And as discussed above, Petitioners could avail themselves of the step (3) BIA appeals process, but have not done so or claim that it would be futile. At each level, the reviewing authority considers whether the non-citizen poses a danger to the community or flight risk. *See* 8 C.F.R. § 236.1(c)(8); *In re Guerra*, 24 I. & N. Dec. at 40. The procedures also provide IJs with a non-exhaustive list of factors to consider and do not limit the non-citizen from presenting any available information. *Id.* at 39. Even after review by the IJ and BIA, Petitioners could seek a custody redetermination from an IJ by showing that the "circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e).

In *J.G.*, the Court also found that these "review procedures do not sufficiently mitigate the risk of an erroneous deprivation because the administrative review process takes several months to conclude." *J.G.*, 501 F. Supp. 3d at 1338 (citing *Mathews*, 424 U.S. 341-42). Petitioners argue the same in justifying their failure to exhaust the administrative remedies available to them. The fact that Petitioners were denied bond, by itself, does not establish that the procedures applied in reaching those determinations were inadequate from a procedural due process standpoint because "Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General." *Reno*, 507 U.S. at 306 (citations omitted). Rather, "detention during deportation proceedings is a constitutionally valid aspect of the deportation process," *Demore*, 538 U.S. at 523. The extensive and multi-faceted bond procedures provided by § 1226(a) minimize any risk of erroneous deprivation.

The third *Mathews* factor—the Government's interest—weighs in Respondent's favor as well. In *J.G.*, the Court held that this factor was neutral, primarily by distinguishing the Government's interest in detaining "noncitizens seeking initial entry to the United States at the border [with] those who entered the country legally." *J.G.*, 501 F. Supp. 3d at 1339-40 (citing

Zadvydas, 533 U.S. at 693); *see also id.* at 1339 ("[T]he Government's interest in controlling admission of noncitizens at the border does not justify his detention." (citation omitted)). The Court found J.G. to have been lawfully admitted, and thus concluded that he was entitled to "procedural protections not afforded to noncitizens seeking initial entry[.]" *Id.* Here, of course, Petitioners were not lawfully admitted, and therefore the "Government's interest in controlling admission" justifies their detention.

The Court in *J.G.* also framed the Government's interest in purely economic terms. *Id.* at 1340 ("Incarceration that serves no legitimate purpose wastes taxpayers' money and hinders judicial efficiency. (citation omitted)). In *Miranda*, the Fourth Circuit reversed a district court for focusing on "financial costs" but "fail[ing] to even identify, much less address, the government's other interests in the current procedures, especially its control over matters of immigration." *Miranda*, 34 F.4th at 364. And while in *J.G.* the Court acknowledged a Government interest in "preventing noncitizens from fleeing the country[,]" it focused on "whether [the individual detainee's] detention [was] serving the Government's purpose of preventing him from absconding[.]" *Id.* at 1340-41.

But this conclusion does not overcome the Government's interest in enacting and enforcing its immigration laws. To the contrary, "the Supreme Court has specifically instructed that in a *Mathews* analysis, [courts] 'must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Landon*, 459 U.S. at 32); *Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government."). Indeed, in enacting and enforcing the United States'

immigration laws, the Government's interest is at its zenith. *Fiallo*, 430 U.S. at 792 ("[O]ver no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." (internal quotations and citations omitted)).

This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings. *Id.* "There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law." *Nken*, 556 U.S. at 436 (internal quotations, alterations, and citation omitted). In fact, the Supreme Court has recognized that § 1226(a) affords DHS "broad discretion" in determining whether to detain or release a non-citizen awaiting a removal order. *Nielsen v. Preap*, 586 U.S. 392, 409 (2019). Congress provided this discretion specifically based on "evidence that one of the major causes of the . . . failure to remove deportable criminal aliens was the agency's failure to detain those aliens during their deportation proceedings." *Demore*, 538 U.S. at 519 (citing H.R. Rep. No. 104-469, at 123 (1995)). "And Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest, so vital that it has tried to cabin judicial review of immigration enforcement." *Miranda*, 34 F.4th at 364 (citing 8 U.S.C. §§ 1226(a), 1226(e), 1252(f)(1)). Both the Government's strong interest in enforcing immigration laws generally and its interest in detaining non-citizens during removal proceedings specifically show that the third *Mathews* factor weighs in the Government's favor.

For all these reasons, consistent with rulings from the Third, Fourth, and Ninth Circuits, as well as multiple district courts in the Eleventh Circuit, this Court should find that the § 1226(a) bond procedures—including the requirement that the non-citizen bear the burden of proof—satisfy

non-citizens' procedural due process rights, and that the bond hearings provided to Petitioners, specifically, complied with the Court's orders. Accordingly, if the Court determines that a full review of the due process analysis is appropriate at this procedural posture, such a review shows that Petitioners' due process challenge fails on the merits.

CONCLUSION

For the reasons stated above, Respondent respectfully requests that the Court deny Petitioners' motions to enforce.

Respectfully submitted this 13th day of March, 2026.

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